1988

Salt Lake County v. State Tax Commission : Brief of Petitioner

Utah Supreme Court

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BRIEF

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IN THE SUPREME COURT

OF THE STATE OF UTAH

SALT LAKE COUNTY ex rel COUNTY BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH,	*	Case No. 88-0447
Petitioner,	*	
-vs-	*	
STATE TAX COMMISSION OF UTAH, ex rel, BELL MOUNTAIN CORPORATION,	*	Priority Category 14(a)
Respondent.	*	

BRIEF OF THE PETITIONER, SALT LAKE COUNTY ex rel COUNTY BOARD OF EQUALIZATION OF SALT LAKE COUNTY STATE OF UTAH

APPEAL FROM THE DECISION OF THE UTAH STATE TAX COMMISSION
ISSUED OCTOBER 31, 1988

R. H. HANSEN, CHAIRMAN, TAX COMMISSION OF UTAH

* * *

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JURISDICTION

Jurisdiction of the Supreme Court in this matter is found in Section 78-2-2(3)(e), Utah Code Ann. (1953, as amended). Pursuant to Rule 14, Rules of the Utah Supreme Court, a Petition for Writ of Review of the final decision of the Tax Commission of Utah: R. H. Hansen, Chairman, in the matter has been properly filed within the time required by Rule 14(a) of the Rules of the Utah Supreme Court. No other claims remain to be determined in these proceedings and appeal is taken to this Court.

STATEMENT OF NATURE OF PROCEEDINGS BELOW

This appeal is from the Formal Decision of the Utah State Tax Commission wherein said Commission granted a property tax preference to Bell Mountain Corporation and reduced the value of approximately 431 acres of property owned by Bell Mountain Corporation to its value for agricultural purposes. The property was immediately adjacent to subdivision property being developed by Bell Mountain Corporation and was used for grazing approximately 6 head of cattle each year which were ultimately sold to officers of the corporation, their families and friends. The Tax Commission decision was issued on October 31, 1988. Petition for Writ of Review was filed by petitioner Salt Lake County on November 29, 1988. Writ of Review was issued by the Supreme Court on November 30, 1988.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether annually grazing approximately 6 cattle on portions of the subject property and the receipt of $1,000 dollars from principals of the corporation owning the subject property in exchange for future deliveries of beef, qualified said property for assessment as agricultural property.

2. Whether or not the assessment of property of the Farmland Assessment Act is a limited tax exemption and should be narrowly construed.

3. Whether property incapable of sustaining agricultural activity may be qualified for assessment under the Farmland Assessment Act based on its proximity to other land on which agricultural activities occur.

STATEMENT OF THE CASE

Petitioner, Salt Lake County, during tax year 1985, assessed the property that is the subject matter of this appeal. The Respondent owns a large tract of land in the southeast portion of Salt Lake County. It is the practice of the Respondent to place the property in Farmland Assessment Act (Greenbelt) status and obtain the tax preference incident thereto. As portions of the property are converted to residential subdivision lots, they are removed from Greenbelt status. Approximately 431 acres remain undeveloped and are the subject of this litigation. The Respondent each year raises approximately 6 cattle on the property. The Salt Lake County

Board of Equalization, based upon audits conducted by the State Tax Commission and the Salt Lake County Assessor's Office, determined that the property was not actively devoted to agricultural use. Accordingly, the Board of Equalization determined that the property was not subject to assessment under the Farmland Assessment Act, but was rather subject to assessment at fair market value as is all other tangible property located within the State of Utah. Thereafter, Respondent Bell Mountain Corporation filed a Notice of Appeal to the Utah State Tax Commission on April 3, 1987. On November 17, 1987, the Utah State Tax Commission issued an informal decision wherein it determined that the subject property had not generated income from arms length transactions sufficient to qualify it for assessment under the Farmland Assessment Act, and, accordingly, the property was subject to assessment at its full fair market value and subject to the imposition of the roll back tax provided for by the Act. Respondent Bell Mountain Corporation filed a Petition for Rehearing on December 18, 1987, which hearing was held on February 18, 1988. Thereafter, on October 31, 1988, the Utah State Tax Commission issued its formal decision determining that the subject property should be valued as land qualified for assessment under the Farmland Assessment Act and directed the Salt Lake County Auditor to so reflect the decision on the assessment rolls of the County. Petitioner thereafter filed a Petition for a Writ of Review which Petition and Writ were filed on November 29, 1988, and issued on November 30, 1988.

STATEMENT OF FACTS

The property that is the subject of this appeal is located in Salt Lake County, Utah, and owned by Bell Mountain Corporation. The subject property consists of approximately 431 acres of mountainside property on the southeast bench of Salt Lake County. The property is bisected by a major highway providing access into adjoining subdivisions (T-42).[1] The subject property is bounded by residential developments with homes abutting it (T-10, 11) (R-84 through 86) and located immediately adjacent to other property developed by the same corporation as a residential subdivision. As Bell Mountain can develop portions of the subject property they are removed from the Greenbelt Classification. Bell Mountains' principal occupation is developing real estate (R-27, T-40) and agriculture constitutes a nominal portion of the income it generates from its real estate. Over 99.5% of its income is derived from real estate development activities. (R-26-33). The property was first made subject to the Greenbelt Assessment Provisions in 1983 (T-51). Subsequent to that time, Bell Mountain Corporation generally grazed approximately 6 cows per

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[1] (References to the transcript of the formal hearing before the Utah State Tax Commission shall be designated by the initial "T"; references to other portions of the record before the Tax Commission shall be designated by the letter "R".)

year on the approximately 431 acres (T-6, 7, 12-14). Of the approximately 431 acres, between 200 and 300 acres were unusable for agricultural purposes because of the existence of either steep cliffs or deep gullies (T-40, 43). Of the 431 acres, only approximately 100 acres was used for the actual grazing of the cattle (T-40, 43). Although an intermittent stream and ditch cross the property and scrub oak and native plants grow on it, the land is generally insufficient for the agricultural use and requires the provision of supplemental feed (hay) and water from city water sources (T-40; R-115). Respondent, in order to meet the minimum income requirements established pursuant to §59-5-89 (now §59-2-503), Utah Code Ann. (1953, as amended), provided income statements for the years the property was subject to Greenbelt valuation (R-26-33, 93-95). Bell Mountain Corporation, an accrual basis taxpayer during the years in question, operated on a fiscal year from November 1 to October 31. On September 30, 1985 it made a bookkeeping entry on its books in the exact amount of $1,000 reflecting sales of 2 cows to Gordon Johnson in the amount of $500, and Charles Horman in the amount of $500, two principals of the corporation (R-120; T-30, 31). No actual payment occurred at that time. No other income was received during the corporate fiscal year extending from November 1, 1984 through October 31, 1985 (R-30, 31, 120). In fact, no income from agricultural activity was received by Bell Mountain Corporation from April 19, 1984 through January 7, 1986 (R-120).

No specific animals were identified as becoming the property of Horman and Johnson and no contract was executed specifying the exact amount of beef to which Horman and Johnson would be entitled. Risk of loss with respect to any particular animal was not transferred to Horman and Johnson on the date of the transaction (T-31). The sale price of the cut and wrapped beef was set below current market prices for similar products and discounted even further to relatives and friends (T-27). The transactions between Bell Mountain Corporation and Horman and Johnson were priced at 70-80% of the amounts charged others (R-36).

The Tax Commission on the 31st day of October, 1988, issued its formal decision and determined that the subject property was land qualified to be assessed under the Farmland Assessment Act as having met the minimum acreage and income requirements. The Commission specifically held that income in excess of $2,000 over a two year period was sufficient to meet the requirements of §59-5-89 (now §59-2-503), Utah Code Ann. 1953, as amended, and directed the County Auditor to adjust its records to reflect the Greenbelt exemption on the subject property (R-11-25). Petitioner, Salt Lake County, filed its Petition for Writ of Review on the 29th day of November, 1988 (R-2-10). Said Writ of Review was duly issued to the Clerk of this Court on November 30, 1988 (R-1-7).

SUMMARY OF ARGUMENTS

The property owned by Bell Mountain Corporation which is the subject of this appeal is not property qualified for the preferential tax treatment afforded under the Farmland Assessment Act. Specifically the property does not meet the requirements of that Act that it be "actively devoted to agricultural use." When viewed as a whole it is clear that the property, some 431 acres, is used to raise approximately 6 cows each year, many of which are sold at less than market prices to corporate principals, their families or friends. Over half of the property is not subject to any agricultural use and what agricultural use there is on the balance requires the importation of both feed and water in most years. In the Respondent's tax year 1985 the only income received by the Respondent was a bookkeeping entry during the fiscal year for a future payment of exactly $1,000 (the exact minimum amount required to meet one of the qualifications for the tax preference), charged to the accounts of two corporate principals. No actual payment was made at that time by Horman or Johnson. Said transaction was not an arms-length transaction qualifying for recognition as gross income under the Farmland Assessment Act.

In summary, the agricultural use of the property was de minimis in comparison with the over-all corporate activities. Only limited portions of the property were devoted to agricultural use and the agricultural revenues generated were nominal.

ARGUMENT

POINT I.

THE APPROXIMATELY 431 ACRES OF LAND OWNED BY BELL MOUNTAIN CORPORATION, WHICH IS THE SUBJECT OF THIS APPEAL, IS NOT "LAND WHICH IS ACTIVELY DEVOTED TO AGRICULTURAL USE" WITHIN THE MEANING OF THE UTAH FARMLAND ASSESSMENT ACT.

Bell Mountain Corporation is a large real estate development company with holdings located in the southeast foothills of Salt Lake County. These property holdings are generally placed under the tax protection of the Farmland Assessment Act until market and development conditions justify their removal. At that point, the property is converted to residential subdivision property and withdrawn from the Farmland Assessment Act. The Respondent contends that the grazing of approximately 6 cows annually and the generation of at least $1,000 in agriculturally related income qualifies all the property in question for the tax preference provided by that Act. §59-5-87 (now §59-2-503) Utah Code Ann. 1953, as amended, provides a complete list of all the criteria which property seeking assessment under the provisions of the Farmland Assessment Act must meet. Those criteria are far more extensive than the minimal acreage, use and income requirements relied upon by the Respondent. The section provides, in part, as follows:

> (1) For general property tax purposes and land subject to the privilege tax imposed by section 59-13-73 owned by the state or any political subdivision thereof, <u>the value of land</u>, not less than five contiguous acres in

> area, unless otherwise provided under subsection (2), which has a gross income, not including rental income, of $1000 per year, is actively devoted to agricultural use, which has been so devoted for at least two successive years immediately preceding the tax year in issue, shall on application of that owner, and approval thereof as hereinafter provided, be that value which such land has for agricultural use.
>
> (2) The tax commission may grant a waiver of the acreage limitation, upon appeal by the owner and submission of proof that the owner or a purchaser or lessee obtains 80% or more of his income from agricultural products on an area of less than five contiguous acres. (emphasis added)

The Act very clearly provides three criteria which one seeking the tax preference must meet. Two of those relate to minimal acreage and income requirements. The third requirement however, "actively devoted to agriculturally use...for at least two successive years", is the threshold requirement which any applicant must meet before the acreage and income elements become relevant. It is the Petitioner's position that "actively devoted to agricultural use" requires a level of agricultural activity sufficient to establish agriculture as the primary use to which the property is put. To assert otherwise would allow the potential for a taxpayer to effectively eliminate tens of thousands of acres of land from the tax rolls by raising six cows for locker beef for himself, his family or friends. It is for that reason that Petitioner asserts that the phase "actively devoted to agricultural use"

is not mere statutory surplusage but is an active, independent requirement imposed upon those seeking the tax preference.

This is a case of first impression in that there are no other Utah cases that have interpreted the statutory language of "actively devoted to agricultural use." Analysis of the language and reference to analogous provisions do provide guidance in interpreting the statute. Webster's 9th New Collegiate Dictionary defines "devoted" as, "to commit by solemn act," or "to give over or direct to a cause, enterprise or activity." It lists the words "dedicated" and "consecrate" as synonyms and then indicates that the word "dedicate" implies solemn and exclusive devotion to a sacred or serious use or purpose. (emphasis supplied). It is therefore respectfully submitted that the phrase "actively devoted to agricultural use" as used by the Utah State Legislature signifies the intent on the part of the Legislature to require that the tax preference be extended only to those lands that are used nearly exclusively for agricultural purposes. A de minimis non-agricultural use should not disqualify the property from the preferential treatment, but, concomitantly, de minimis agricultural use should not be a basis for qualification. The facts in this case clearly demonstrate that the non-agricultural use to which the property has been subjected over the course of its ownership by Bell Mountain Corporation is dominant rather than de minimis. By far the largest portion of Bell Mountain Corporation's income is generated by its use

of the property in its real estate development activities. Never in any of the years for which financial returns were submitted by Bell Mountain Corporation did the income from the agricultural activity exceed one-half of one percent of its total gross receipts (R-26-33). The price of the cut and wrapped beef produced was customarily set below comparable costs in the market and discounted even further to relatives and friends. The nominal agricultural activity has generated tax savings of nearly $100,000 per year for the real estate development activities which generate over 99 1/2 percent of the corporation's income from that property. Given the sources of the corporation's income from its utilization of the property and portions previously severed from it, the nominal level of agricultural activity, and the casual approach to marketing, pricing and distribution, it is apparent that the dominant use of this property is not agricultural. Rather, the property is actively devoted to real estate speculation and development.

As noted above, this case constitutes a matter of first impression for the courts of the State of Utah. No judicial interpretation of the term "actively devoted to agricultural use" has yet been given. This Court has, however, on several occasions addressed an analogous concept, that of "exclusively used for charitable purposes." In Loyal Order of Moose, No. 259 v. County Board of Equalization of Salt Lake County. 657 P.2d (Utah, 1982), this Court addressed the issue of whether

certain usage constituted usage "exclusively for charitable purposes." In denying the tax exemption the Court made the following statements which are equally applicable to this case. The Court therein at page 263 stated:

> "We see wisdom in a rule which does not deny a tax exemption to property which is used for a charitable purpose simply because there is a de minimis non-charitable use...the intent of Section 2, Article 13 to encourage charity is preserved where inadvertent or extremely minor non-charitable uses of property do not foreclose an exemption. However, where the non-charitable use rises to a level that it must be weighed against charitable use in order to determine which use is dominant, then clearly the non-charitable use is well beyond the point of de minimis and should unquestionably preclude an exemption." (emphasis added).

While it might be argued that the constitutional requirement of "used exclusively for" is more rigorous and narrow than the statutory requirement of being "actively devoted to agricultural use" the same reasoning is applicable. An exemption from taxation or a substantial reduction in taxable value such as is given for agricultural land is a tax preference. The rules requiring strict and narrow construction of tax exemption statutes should be equally applicable to substantial reductions in tax burden or the giving of tax preferences through valuation adjustments. The financial implications of tax exemptions and tax preferences are identical. The shift of the tax burden to other taxpayers occurs whether the preference is by way of a reduction in value

or an exemption, and significantly the entire thrust of Utah Const. Art. XIII, §§2 and 3 is to provide for taxation of property according to its full value in money unless it falls within one of the specifically enumerated exemptions or mandated reductions. To qualify for the exemption from assessment at full fair market value the Legislature has determined that the land must be "actively devoted to agricultural use." This requirement was placed in the statute as an independent threshold requirement exclusive of minimum acreage or income levels. It speaks ultimately to the total use the taxpayer makes of the property and allows a de minimis non-agricultural use to occur without endangering the tax preference so long as the agricultural use is primary, dominant or nearly exclusive. Under this test the property of Bell Mountain Corporation cannot qualify. Agricultural activity is nominal, the agricultural revenues never exceed more than one-half of one percent of the total corporation revenues. It is simply just enough agricultural activity to meet the minimum income requirements, thus saving nearly $100,000 per year in property taxes for a real estate development corporation.

To impose a requirement that the agricultural use of the property be primary, dominant or nearly exclusive is consistent with the Utah cases dealing with property tax exemptions generally. Specifically, exemptions are strictly construed in favor of taxation and against exemption. Additionally this requirement is consistent with the decisions of courts in other

jurisdictions which have interpreted the elements inherent in "devoting" property to particular uses. In Rushton Hospital, Inc. v. Riser, 191 S.2d 665 (La. 1966), the Louisiana Court of Appeals defined the elements inherent in allowing exemption from taxation for "places devoted to charitable undertakings." The court held that it was the use of the property that constituted the test and the term "devoted to" connotes a setting apart--a dedication. Based upon the constitutional requirement of "devoted to" the court held that:

> "There must be evidence which establishes the fact that the operation and use of the undertaking is devoted exclusively to the performance of charitable acts." (emphasis added). Id. at 667.

In the case of Otis Lodge, Inc. v. Commissioner of Taxation, 206 N.W.2d 3 (Minn. 1972), the Minnesota Supreme Court dealt with a statute that taxed property at a lower rate if it were "devoted to temporary and seasonal residential occupancy for recreational purposes." In interpreting the phrase the court rejected a requirement of strict exclusivity, but affirmed that the property must be used primarily or "chiefly" for the statutory purpose. At page 7 the court noted:

> "Perhaps some attention should be given to the use of the word 'devoted' in the phrase we are interpreting. Does it mean, as used here, given 'wholly and completely' or 'chiefly' to 'seasonal residential occupancy for recreational?'...we think that the word 'devoted' means chiefly and not wholly.... Furthermore the phrase 'devoted to' clearly means the use to which it is actually put, not

the use or uses to which the property may be put." (emphasis added).

This holding was reaffirmed in Wolfe Lake Camp, Inc. v. County of Itasca, 252 N.W.2d 261 (Minn. 1977), in which the Minnesota Supreme Court held that under the same statute as was involved in the Otis Lodge case, the term "devoted to" the statutorily mandated usage meant that the actual use of the real property must be chiefly for the statutorily mandated purposes. The reasoning in Otis has been cited with approval by the United States Court of Appeals for the 9th Circuit in Complaint of McLinn, 744 F.2d 677 (C.A.9th 1984); and see also Helgeson v. County of Hennepin, 387 N.W.2d 408 (Minn. 1986).

While the cases interpreting the phrase "devoted to" have been primarily cases dealing with the granting or denial of charitable tax exemptions, courts have construed not only the intent of farmland assessment statutes similar to Utah's, but also the statutory requirements that property be "devoted to" agricultural purposes. In a case involving a statutory framework substantially similar to Utah's, the Superior Court of New Jersey in City of East Orange v. Township of Livingston. 246 A.2d 178 (N.J. 1968), was faced with a situation where property was subject to nominal agricultural use and concurrently used in a non-active fashion as a watershed area. The court was required to interpret which of the two uses was dominant and whether the nominal agricultural activity was

sufficient to conclude that the land was "actively devoted to agricultural or horticultural use" sufficient to justify a tax preference. The requirements of the New Jersey statute are virtually identical to the elements found in the Utah Farmland Assessment Act (§59-2-501 et seq. (1953 as amended)). The New Jersey Farmland Assessment Act of 1964 provided in pertinent part as follows:

> "For general property tax purposes, the value of land, not less than 5 acres in area, which is actively devoted to agricultural or horticultural use which has been so devoted for at least the two successive years immediately preceding the tax year in issue, shall, on application of the owner, the approval thereof as hereinafter provided, be that value which such land has for agricultural or horticultural use." N.J.S.A. 54:4-23.2 (emphasis added).
>
> "Land shall be deemed to be in agricultural use when devoted to the production for sale of plants and animals useful to man including but not limited to: forages and sod crops; grains and feed crops; dairy animals and dairy products; poultry and poultry products; livestock, including beef, cattle, sheep, swine, horses, ponies, mules or goats, including the breeding and grazing of any or all of such animals; bees and apiary products; fur animals; trees and forest products; or when devoted to and meeting the requirement and qualifications for payments or other compensation pursuant to a soil conversation program under an agreement with an agency of the Federal Government." N.J.S.A. 54:4-23.3.
>
> "Land shall be deemed to be actively devoted to agricultural or horticultural use when the gross sales of agricultural or horticultural products produced thereon together with any payments received under a soil conservation program have averaged at least $500.00 per year during the 2-year period immediately preceding the tax year in issue, or there is clear evidence of anticipated yearly

gross sales and such payments amounting to at least $500.00 within a reasonable period of time." N.J.S.A. 54:4-23.5

The land in question in that case was used both as a Water Reserve and as agricultural property. The contention of the property owner was:

"the Water Reserve is said to be "in agricultural use" within the meaning of the act because it consists of pastureland and is used for the growing and sale of hay, timber and cordwood from which East Orange derives an annual income in excess of the statutory minimum. It also is asserted tangentially that the Water Reserve is entitled to farmland assessment because it is under a federal soil conservation program." City of East Orange (supra at 185).

The Court therein stated that:

"The purpose of [The Farmland Assessment Act of 1964] was to counter the adverse impact of property taxation upon agriculture and to provide farmers with some measure of tax relief." Id. at 188.

Further, at page 189-190:

"It was apparent that the main objective of the proposed amendment was to enable and encourage farmers to continue to farm their land in the face of dwindling farm incomes and mounting costs, not the least of which was sharply increasing real estate taxes. Senate Committee on Revision and Amendment of Laws, Public Hearing, "Senate Concurrent Resolution No. 16, etc." (April 15, 1964). There were also other incidental, beneficent purposes anticipated by its proponents, such as fostering agriculture in the State for the good of the general economy, ameliorating problems

of urban growth in rural municipalities, and encouraging the preservation of open spaces. Id., pp. 5, 11-13, 16, 33-35. But, as noted, the primary objective was to save the "family farm" and to provide farmers with some economic relief by permitting farmlands to be taxed upon their value as on-going farms and not on any other basis."

The relevant portions of the holding are then stated at page 191 of the decision:

"Moreover, even if a municipal watershed were within the ambit of the Farmland Assessment Act of 1964, the agricultural activities undertaken on the East Orange Water Reserve would not qualify these lands for taxation as farmlands. The pointed inquiry on this hypothesis is whether, by virtue of the activities relating to the sales of hay, timber and cordwood, it can be said that the East Orange Water Reserve is "actively devoted" to "agricultural use" within the meaning of N.J.S.A. 54:4-23.5. Even though the agricultural use is "active" in the literal sense that East Orange has realized income in excess of $500 per annum for the past two years from the sale of timber, cordwood and hay (N.J.S.A. 54:4.23.5), compliance with this single criterion does not per se render the Water Reserve as land 'devoted' to agricultural use. To be 'in agricultural use' under the act, land must actually be 'devoted to the production for sale of plants * * * useful to man, including but not limited to * * * trees and forest products * * *..' It may be accepted that trees and forest products are a derivative of the East Orange Water Reserve. It does not follow therefrom that the East Orange Water Reserve is devoted to the production for sale of its trees and forest products.

* * * * *

In brief, the term "devote" must be understood in its usual significance and in a manner which will sensibly effectuate the

salient statutory objective of providing tax relief with respect to lands committee to farming.

The verb "devote" denotes variously "1, * * * to set apart or dedicate by a solemn act; to consecrate; * * * 2. to give up wholly; to addict; to direct the attention of wholly or chiefly." A synonym is "to set apart" or "to appropriate." An equivalent verb is "to dedicate." Webster's New International Dictionary (1948 ed.), 715.

All of the experts recognize that there can be multiple uses of woodlands or forests, which could include or combine the production of water, wood, recreation, education and the like. Depending upon the particular lands involved, one use tends to become dominant. The principal use of the East Orange Water Reserve is a watershed. Any commercial gain from the sale of hay, timber or wood is merely an incidental by-product of the maintenance of the Water Reserve woodlands. The management of the forest, including the planting, harvest and removal of trees, is for the essential purpose of encouraging the recharge and replenishment of the under-ground wells. As far as the state program is concerned, the cutting plan for trees is not for the purpose of producing lumber commercially but with a view towards the primary use of lands as a watershed. Consequently, from any vantage point, the agricultural uses of the Water Reserve must be regarded as subservient to its dominant use as a public water supply. In no sense, therefore, can it be used that the East Orange Water Reserve is devoted, that is, committed, or dedicated, or set apart or appropriated, or given up wholly or chiefly to the production for sale of agricultural products of any kind within the meaning of the Farmland Assessment Act of 1964. To the contrary, it is devoted to the purpose for which it was originally acquired by East Orange, namely, for the purpose and the protection of a public water supply. (emphasis added).

The Superior Court's ruling in The City of East Orange

case was affirmed by the Supreme Court of New Jersey in City of East Orange v. Township of Livingston, 253 A.2d 546 (N.J. 1969).

The purposes for which the Utah Farmland Assessment Act were adopted are identical to those underlying in the New Jersey statute. The Utah State Tax Commission in its publication Utah Farmland Assessment Act, 1969, addressed the underlying theory for the Act. It identifies the Farmland Assessment Act as "legislation permitting qualifying agricultural land to be assessed at productive or income value rather than at market value" and stated the reason for its enactment as "it was recognized that the ad valorem property taxation of farms especially in close proximity to urban areas, was becoming prohibitive to economical farm operations." Utah State Tax Commission Utah Farmland Assessment Act, 1969, p. 10 (R-107). It enable farmers to continue to farm land, particularly in close proximity to urban areas in the face of dwindling farm income and mounting costs. Allowing the nominal agricultural usage present in this case to qualify a vast acreage which is largely and principally held and used for real estate speculation and development is not consistent with or in furtherance of the legislative intent. The income generated by Bell Mountain Corporation's real estate holdings is over 99 1/2 percent derived from their real estate speculation and development activities. The limited agricultural activity is purely a secondary purpose of the corporation. It is a secondary use of the land. In no sense can Bell Mountain be

said to have devoted the land to agricultural activities. Certainly as that term has been interpreted, Bell Mountain has not committed or dedicated, or set apart or appropriated, or given up wholly or chiefly to the production for sale of agricultural products the 431 acres under its control. As noted in the dissenting opinion of Commissioner Davis in the formal hearing below:

> "...(E)ven though it is acknowledged that the agricultural use of the petitioner's land is active use, that does not per se render the land 'devoted to agricultural use'. In this case, the chief dominant primary use of the land is to hold for investment for future development. The agricultural uses are so secondary and incidental as to be only de minimis use of the property. The land is devoted to, dedicated to, committed to, given over to, and consecrated to investment for development for residential homes. In my opinion the requirement set forth by the statutes do not provide simply litmus tests which qualify the property for greenbelt if those tests are met. The primary test is the property must be 'actively devoted to agricultural use'." (R-23)

Altogether at least 35 states have adopted a tax preference for agricultural properties. While not all of them couch entitlement to the preference in terms of actively devoting property to agricultural use, most of them evidence a similar concern that there be good faith agricultural use. This is in recognition that agricultural use tax preferences have become the haven of not only legitimate agricultural enterprises, but real estate developers and speculators seeking

to minimize the current tax burden on their holdings. This has been noted in at least two scholarly publications.

> "A well founded suspicion exists that preferential farmland assessments are at least as beneficial to land speculators as to farmers. For example, speculators can purchase agricultural land and arrange for the land to be farmed until development becomes sufficiently profitable. The land may thus be held at a lower tax rate until conditions are ripe for development. The imposition of roll-back taxes at the time agricultural land is converted to new uses, probably has an insignificant impact. First, the roll-back 'penalty' recoups only the amount of property taxes actually excused, over a limited period of time, by the preferential assessment. Consequently, absent an interest charge on the roll-back amount, the investor obtains all of the advantages of a deferred tax. Moreover, cash flow advantages to the speculator are apparent and enticing--cash requirements remain minimal during the holding period and the roll-back accrues only when the development begins and development financing is available to pay it." Olpin, Preserving Utah's Open Spaces, 1973 Utah L.Rev. 164, 188.

> "Any special tax break for one class of taxpayer at the expense of the rest deserves close scrutiny. Preferential farm use assessment has resulted in a substantial loss in public revenue or a shift in the tax burden to non-agricultural taxpayers. While some needy farmers may have benefited by the tax break, so have prosperous corporations, land speculators, and weekend farmers. Preferential farm use assessment has not preserved open space or controlled urban sprawl." Henke, Preferential Property Tax Treatment for Farmland, 53 Or.L.Rev. 117, 130 (1974).

In interpreting good faith agricultural use provisions analogous to Utah's "actively devoted to agricultural use" requirement, the courts have identified a variety of factors to

be considered in determining eligibility for the tax preference. In North Carolina eligibility for the tax preference is based upon the actual present use of the property. Where the property is owned by a corporation as opposed to individuals, factors for consideration focus on the corporate owner and its sources of income. In W. R. Co. v. North Carolina Property Tax Commission, 269 S.E.2d 636 (N.C. 1980), the court looked at the corporate income and the sources of that income in denying eligibility for the agricultural tax preference. The court concluded that the farm related income constituted only a minor fraction of the corporation's total income and, in a set of factual circumstances remarkably similar to that present in the instant case, noted that:

> "The farm related income constituted only a minor fraction of the corporation's total income. In fact, for the period 1967 through 1977, income from the sale of land or easements amount to 99.29 percent of the corporation's total income." Id. at 641.

In discussing the nature of the corporation's activities with respect to the land, further parallels can be found with the instant case. Portions of the original tract were sold off as development activities presented themselves. One of the original tracts had been developed into a large regional shopping center which influenced the ultimate development of the balance of the property. The court noted "the subject property is in transition from agricultural and forest use to

commercial use and the cultivation of crops on the land is incidental to the obvious corporate plan to sell the property for development purposes." Id. at 640. The test in Utah is the use of the property. It is clear from the record that the Respondent has utilized the property primarily for real estate development. As development opportunities have presented themselves, portions have been severed from the original parcel and transformed into residential subdivisions. The use of the property itself is primarily for real estate development as evidenced by the fact that over 99.5 percent of the corporation's income is derived from those real estate activities. The limited extent of the agricultural activity makes it clear that the property is neither "devoted to agricultural purposes" nor used in a "good faith commercial agricultural use". It simply is an abuse that does violence not only to the goals of the people in enacting the constitutional amendment, but the intent of the Legislature in implementing that amendment. This court should not allow the perpetuation of such an abuse. The independent requirement that land be "devoted to agricultural use" requires more than the self-serving raising of beef to fill the freezers of one's family and friends, it requires at least good faith commercial agricultural activity. The record does not support that any such level of activity occurred on this property. The preference given Bell Mountain Corporation by the Tax Commission should be reversed and set aside.

POINT II

THE TAX COMMISSION ERRED IN GRANTING A PREFERENTIAL FARMLAND ASSESSMENT TO APPROXIMATELY 200 TO 300 ACRES WHICH THE UNDISPUTED TESTIMONY SHOWED HAD NEVER BEEN USED IN ANY AGRICULTURAL ACTIVITY.

All of the testimony presented by Bell Mountain Corporation through its counsel and corporate officers identified 200 to 300 acres as being absolutely unused in any agricultural activity. That portion of the property was composed of steep hillside onto which and deep gullies into which the six cows refused to enter. Respondent contended that this parcel, consisting of approximately half of the total acreage, was eligible for the tax preference because there existed an agricultural land classification for "non-productive land" (R-117-118). This concept has not been interpreted by the courts of Utah, but the Utah State Tax Commission Property Tax Division in its Assessor's Handbook dated November, 1987, addressed the issue as follows:

> "(Q) Under the Farmland Assessment Act, what is the value of land classified as 'non-productive'?
>
> (A) Land which is classified as 'non-productive' is given a minimum value which is the same as IV - Graze. If it is to be considered as part of the total area to be included under the FAA, it must be an active part of the total agricultural operation and contribute to total agricultural income." Utah State Tax Commission, Assessor's Handbook, The Assessment of Agricultural Land Under the Farmland Assessment Act, p. 19 (1987).

The testimony of the Respondent was clear and unequivocal that the cows "will not go up the steep cliffs and won't go down in the gullies where the terrain is too severe for them" (T-43). It is clear from that testimony that the land in question (Parcel F-Tax Roll No. 28-13-300-003) (R-86, 104), does not contribute to the agricultural income or form an integral part of the "agricultural" enterprise. In interpreting entitlement to tax preference of marginal agricultural property located adjacent to property clearly qualifying as being in agricultural use, the Superior Court of New Jersey in Urban Farms, Inc. v. Township of Wayne Passaic County, 386 A.2d 1357, 1359 (N.J. 1978), held that such marginal property may be given the preferential tax treatment "when it is appurtenant to and reasonably acquired for the purpose of maintaining the land actually devoted to agricultural use...." In the present case the property in question has never been in agricultural use and, as the cows cannot utilize it, is certainly not "reasonably required for the purpose of maintaining the land actually devoted to agricultural use." Petitioner respectfully submits that the Tax Commission ignored its own interpretive handbook and the simple language of the statute in allowing the continuance of the tax preference for this non-productive property. It should be removed from treatment as farmland and assessed at its full fair market value. Accordingly, the decision of the Tax Commission should be reversed and the property placed on the

tax rolls of Salt Lake County at its full fair market value.

POINT III

RECEIPT OF REVENUE IN THE MINIMUM QUALIFYING AMOUNT FROM TWO PRINCIPALS OF THE CORPORATION OWNING THE LAND DOES NOT CONSTITUTE QUALIFYING INCOME FROM ARMS-LENGTH TRANSACTIONS FOR PURPOSES OF MEETING THE MINIMUM QUALIFICATIONS FOR FARMLAND ASSESSMENT ACT ASSESSMENT

On September 30, 1985, shortly before the close of the Respondent's fiscal year, the Respondent entered a bookkeeping transaction in the sum of $1,000 (the minimum income requirement under the Farmland Assessment Act) composed of $500 obligations on the part of each of two principals of the corporation. Mr. Horman is the corporation's president and Mr. Johnson is the corporation's vice-president. Respondent, an accrual basis taxpayer, received no money from the two individuals at that time. The entry was merely evidence of an obligation in that amount payable at a future date for two cows. The transaction did not identify which cows or the amount of beef to be delivered. No clear risk of loss shifted at that point with respect to any animal. The testimony was that if something had happened to one of the cows thereafter the loss would be "shared" with the corporation. At the time of the transaction the two officers of the Respondent which purchased the beef had no idea whether any cows would survive or what any of the weights of the surviving cows might be.

Respondent contends that this prepaid transaction for future delivery of an unidentified amount of beef at an unspecified price per pound constituted an arms-length transaction because at the time the beef was slaughtered their prepaid purchase roughly correlated to market prices. The date submitted by the Respondent showed that prices paid by the two officers ranged between 70-89 percent of what was charged other co-purchasers of the same beef (R-37). The testimony of the Respondents clearly indicated that all beef was consistently priced below the market price for similar products and, as evidenced by the discounts given in the case of the $1,000 pre-payment, discounted even further to family and friends. Petitioner submits that this assertion of arms-length equivalence must fail for two reasons. The first is predicated upon the administrative interpretation of the gross income requirement supplied by the Tax Commission. In its Assessor's Handbook the Commission provides the following guidance:

> "(Q) Can agricultural produce such as eggs, milk, meat, garden produce, etc. grown on land included under the Act and subsequently used by the owner, be included in the gross income computation?
>
> (A) The $1,000 minimum gross income must be derived from the sale of agricultural products. The value of products consumed by the owner and his family cannot be included." Utah State Tax Commission, Assessor's Handbook, the Assessment of Agricultural Land Under the Farmland Assessment Act, p. 15, (1987).

The evidence in the record shows that notwithstanding the

existence of a corporate structure the land functioned as the equivalent of a family garden plot for principals of the corporation and their families. Sales coincident to that useage should be disallowed from the calculation of gross income, particularly where the consideration paid was less than the fair market value of the property. Petitioner additionally submits that the sales referenced by the Respondent as qualifying sales fail to meet the additional test applicable to an arms-length transaction between a corporation and its officers. Charles H. Horman, and Gordon Johnson the purchasers, are corporate officers of Bell Mountain Corporation. As such, under Utah law they owed a fiduciary obligation to that corporation. §22-1-1, Utah Code Ann. (1953, as amended). That obligation specifically required that all dealings with the corporation be in good faith and the interest of the corporation be placed above the personal interests of the officers. If, as one might reasonably infer, the goal of the corporation was to make money and to market its products, be it land or cattle, at full fair market value thus earning the maximum return for the shareholders, the record clearly establishes that obligation was not met in the instant case and the transactions were not, accordingly, "arms-length". At no time were the cattle sold for their full fair market value. Upon slaughter they were sold for less than the comparable prices for like products within the community. The corporate officers paid even less than that discounted price. As the

record shows, they paid only 70-89 percent of what others were charged for portions of the same beef. This course of conduct does not comply with the standards that have been imposed by the courts in determining whether transactions are arms-length. Generally an arms-length transaction is one which compares favorably with the usual course of action taken in conduct of business with trade generally. Search v. Union Pacific R.Co., 649 P.2d 48 (Utah 1982), Utah Department of Admin. Serv. v. Publ. Serv. Com'n, 658 P.2d 601, 614-615 (Utah 1983). Markham v. Kentucky and I.T.R. Co., Ky., 363 S.W.2d 98, 100. Additionally, in evaluating whether a transaction is an arms-length transaction for federal excise tax purposes, the Court in Creme Mfg. Co., Inc. v. U.S., C.A.Tex., 492 F.2d 515, 520, held that the following relationship must exist between the parties for a transaction to be an arms-length transaction. The transaction must be between parties with adverse economic interests and each party to the transaction must be in a position to distinguish his economic interest from that of the other party and, where they conflict, always choose that to his individual benefit. There is no doubt from the record here that the corporate officers paid less than that charged to strangers and that strangers paid less than the rate obtained for similar products in the market place. Such behavior is inconsistent not only with the standards for an arms-length transaction, but with the fiduciary obligations imposed upon a corporate officer in his dealings with the

corporation. Accordingly, the petitioner submits that the transactions between the corporate officers and the corporation were not arms-length transactions and thus were not qualifying transactions for purposes of meeting the minimum income requirements of the Farmland Assessment Act. The decision of the Tax Commission should be reversed and the roll back tax imposed.

CONCLUSION

This Court has the opportunity to end the abuse of what was created to protect legitimate agriculture in this State. The Farmland Assessment Act was intended to be more than a vehicle by which real estate speculators and developers subsidize their activities at the expense of the taxpayers. Casual agricultural operations consisting of only a de minimis use of the ground should not be an allowable basis for removing large portions of a property's value from the tax rolls. The Legislature did more in implementing the constitutional amendment than impose minimum acreage and income requirements. It provided specifically and independently that the land must be "actively devoted to agricultural use". If that phrase has meaning it requires that the property be dedicated or given over to agricultural activity to the exclusion of other activity. The facts of the present case clearly evidence the degree to which the Respondents have written that operational requirement out of the statute. That it has been allowed to

continue that level of activity for years may be the fault of local assessment jurisdictions as much as the Respondent, but it must be brought to a halt. The assessment of farm land at less than its fair market value is a tax preference and like tax preferences for religious, charitable or educational institutions, it must be narrowly construed. To expand it to include the scope and nature of activities found in the present case undercuts the intent of the people in passing the constitutional amendment and the intent of the Legislature in implementing it. The worthy objectives of the Farmland Assessment Act should not be ignored. They should be implemented and the tax preference limited to its intended recipients. The decision of the Tax Commission should be reversed in its entirety and the subject property should be assessed at its full fair market value, as is all other property that is not "actively devoted to agricultural use".

RESPECTFULLY SUBMITTED this 24th day of April, 1989.

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CERTIFICATE OF SERVICE

I do hereby certify that I caused to be served this 26th day of April, 1989, four (4) copies of the foregoing Brief of Petitioner as required by Rule 26(b) of the Rules of the Utah Supreme Court upon the following:

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ADDENDUM NO. 1

Legislature shall pass laws for the enforcement of this section by adequate penalties, and in case of incorporated companies, if necessary for that purpose, it may declare a forfeiture of their franchise.

1896

ARTICLE XIII. REVENUE AND TAXATION

Sec. 1. [Fiscal year.]

The fiscal year shall begin on the first day of January, unless changed by the Legislature.

1896

Sec. 2. [Tangible property to be taxed — Value ascertained — Exemptions — Remittance or abatement of taxes of poor — Intangible property — Legislature to provide annual tax for state.]

(1) All tangible property in the state, not exempt under the laws of the United States, or under this Constitution, shall be taxed at a uniform and equal rate in proportion to its value, to be ascertained as provided by law.

(2) The following are property tax exemptions:

(a) the property of the state, school districts, and public libraries;

(b) the property of counties, cities, towns, special districts, and all other political subdivisions of the state, except that to the extent and in the manner provided by the Legislature the property of a county, city, town, special district or other political subdivision of the state located outside of its geographic boundaries as defined by law may be subject to the ad valorem property tax;

(c) property owned by a nonprofit entity which is used exclusively for religious, charitable or educational purposes;

(d) places of burial not held or used for private or corporate benefit; and

(e) farm equipment and farm machinery as defined by statute. This exemption shall be implemented over a period of time as provided by statute.

(3) Tangible personal property present in Utah on January 1, m., which is held for sale or processing and which is shipped to final destination outside this state within twelve months may be deemed by law to have acquired no situs in Utah for purposes of ad valorem property taxation and may be exempted by law from such taxation, whether manufactured, processed or produced or otherwise originating within or without the state.

(4) Tangible personal property present in Utah on January 1, m., held for sale in the ordinary course of business and which constitutes the inventory of any retailer, or wholesaler or manufacturer or farmer, or livestock raiser may be deemed for purposes of ad valorem property taxation to be exempted.

(5) Water rights, ditches, canals, reservoirs, power plants, pumping plants, transmission lines, pipes and flumes owned and used by individuals or corporations for irrigating land within the state owned by such individuals or corporations, or the individual members thereof, shall be exempted from taxation to the extent that they shall be owned and used for such purposes.

(6) Power plants, power transmission lines and other property used for generating and delivering electrical power, a portion of which is used for furnishing power for pumping water for irrigation purposes on lands in the state of Utah, may be exempted from taxation to the extent that such property is used for such purposes. These exemptions shall accrue to the benefit of the users of water so pumped under such regulations as the Legislature may prescribe.

(7) The taxes of the poor may be remitted or abated at such times and in such manner as may be provided by law.

(8) The Legislature may provide by law for the exemption from taxation: of not to exceed 45% of the fair market value of residential property as defined by law; and all household furnishings, furniture, and equipment used exclusively by the owner thereof at his place of abode in maintaining a home for himself and family.

(9) Property owned by disabled persons who served in any war in the military service of the United States or of the state of Utah and by the unmarried widows and minor orphans of such disabled persons or of persons who while serving in the military service of the United States or the state of Utah were killed in action or died as a result of such service may be exempted as the Legislature may provide.

(10) Intangible property may be exempted from taxation as property or it may be taxed as property in such manner and to such extent as the Legislature may provide, but if taxed as property the income therefrom shall not also be taxed. Provided that if intangible property is taxed as property the rate thereof shall not exceed five mills on each dollar of valuation.

(11) The Legislature shall provide by law for an annual tax sufficient, with other sources of revenue, to defray the estimated ordinary expenses of the state for each fiscal year. For the purpose of paying the state debt, if any there be, the Legislature shall provide for levying a tax annually, sufficient to pay the annual interest and to pay the principal of such debt, within twenty years from the final passage of the law creating the debt.

January 1, 1931
January 1, 1937
November 5, 1946
January 1, 1959
January 1, 1963

January 1, 1965
January 1, 1969
January 1, 1983
January 1, 1987

Sec. 3. [Assessment and taxation of tangible property — Livestock — Land used for agricultural purposes.]

(1) The Legislature shall provide by law a uniform and equal rate of assessment on all tangible property in the state, according to its value in money, except as otherwise provided in Section 2 of this Article. The Legislature shall prescribe by law such provisions as shall secure a just valuation for taxation of such property, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its tangible property, provided that the Legislature may determine the manner and extent of taxing livestock.

(2) Land used for agricultural purposes may, as the Legislature prescribes, be assessed according to its value for agricultural use without regard to the value it may have for other purposes.

November 6, 1900
November 6, 1906
January 1, 1931
November 5, 1946
January 1, 1969
January 1, 1983

Sec. 4. [Mines and claims to be assessed — Basis and multiple — What to be assessed as tangible property.]

All metalliferous mines or mining claims, both placer and rock in place, shall be assessed as the Legislature shall provide; but the basis and multiple now used in determining the value of metalliferous mines for taxation purposes and the additional assessed value of $5.00 per acre thereof shall not be changed before January 1, 1935, nor thereafter until otherwise provided by law. All other mines or mining claims and other valuable mineral deposits, including lands containing coal or hydrocarbons and all machinery used in mining and all property or surface improvements upon or appurtenant to mines or mining claims, and the value of any surface use made of mining claims, or mining property for other than mining purposes, shall be assessed as other tangible property.

November 8, 1908
January 1, 1931
January 1, 1983

59-5-86. Short title of act.

Law Reviews.

Preserving Utah's Open Spaces, Owen Olpin, 1973 Utah L. Rev. 164.

59-5-87. Value of land actively devoted to agricultural use. (1) For general property tax purposes and land subject to the privilege tax imposed by section 59-13-73 owned by the state or any political subdivision thereof, the value of land, not less than five contiguous acres in area, unless otherwise provided under subsection (2), which has a gross income, not including rental income, of $1000 per year, is actively devoted to agricultural use, which has been so devoted for at least two successive years immediately preceding the tax year in issue, shall, on application of that owner, and approval thereof as hereinafter provided, be that value which such land has for agricultural use.

(2) The tax commission may grant a waiver of the acreage limitation, upon appeal by the owner and submission of proof that the owner or a purchaser or lessee obtains 80% or more of his income from agricultural products on an area of less than five contiguous acres.

(3) The tax commission may grant a waiver of the income limitation for the tax year in issue, upon appeal by the owner and submission of proof that the land has been valued on the basis of agricultural use for at least two years immediately preceding that tax year, and that the failure to meet the income requirements for that tax year was due to no fault or act of the owner or a purchaser or lessee, whether that act is one of omission or commission. "Fault" shall not be construed to include the intentional planting of crops or trees which because of the maturation period of such crops or trees prevent the owner, purchaser, or lessee from achieving the income limitation.

History: C. 1953, 59-5-87, enacted by L. 1969, ch. 180, § 2; L. 1973, ch. 137, § 1; 1975, ch. 174, § 1.

Compiler's Notes.

The 1975 amendment inserted the subsection (1) designation; substituted "gross income, not including rental income, of $1000 per year" in subsec. (1) for "gross income of $250 per year"; substituted "at least two successive years" for "at least five successive years" in subsec. (1); redesignated former subd. (a) as subsec. (2); inserted "or a purchaser or lessee" in subsec. (2); added subsec. (3); and made minor changes in phraseology.

59-5-89. Land actively devoted to agricultural use — Additional requirements — Application for assessment under act — Change in land use — Land used for religious or charitable purposes. Land which is actively devoted to agricultural use is eligible for valuation, assessment and taxation each year it meets the following qualifications:

(1) It has been so devoted for at least the two successive years immediately preceding the tax year for which valuation under this act is requested;

(2) The area of land is not less than five contiguous acres when measured in accordance with the provisions of section 59-5-94, except where devoted to agricultural use in conjunction with other eligible acreage, and when the gross sales of agricultural products produced thereon together with any payments received under a crop-land retirement program have averaged at least $1000 per year, not including rental income, during the two year period immediately preceding the tax year in issue; and

(3) (a) Application by the owner of the land for valuation hereunder is submitted on or before January 1 of the tax year to the county assessor in which the land is situated on the form prescribed by the state tax commission. The county assessor shall continue to accept applications filed within 60 days after January 1 upon payment of a late filing fee in the amount of $25, which shall be paid to the county treasurer.

(b) The county assessor shall have all applications filed under subsection (a) recorded by the county recorder. All necessary filing fees shall be paid by the owner at the time his application is filed. Whenever land, which is or has been in agricultural use and is or has been valued, assessed and taxed under the provisions of this act, is applied to a use other than agricultural, the owner shall, within 90 days thereafter, notify the county assessor and pay the roll-back tax imposed by section 59-5-91. Upon receipt of notice, unless payment of the roll-back tax accompanies that notice, the county assessor shall cause the following statement to be recorded by the county recorder: "On the _____day of _____, 19____, this land became subject to the roll-back tax imposed by section 59-5-91."

(c) Notwithstanding the provisions of (3) (a) and (b) of this section, whenever the owner of land has filed or becomes eligible for valuation under this act, he need not file again or give any notice to the county assessor until a change in the land use occurs. Failure of the owner to notify the county assessor and pay the roll-back tax imposed by section 59-5-91, within 90 days after any change in land use, will subject the owner to a penalty of 100% of the computed roll-back tax due.

(d) Any change in land use or other withdrawal of land from the provisions of this act shall be subject to the provisions of this section whether the change or withdrawal is voluntary or involuntary, unless the change in use is due to ineligibility resulting solely from amendments to this act.

(e) Land which becomes exempt from taxation as provided in section 59-2-30 shall not be considered withdrawn from the provisions of this act as long as the land continues to be used for agricultural purposes.

History: C. 1953, 59-5-89, enacted by L. 1969, ch. 180, § 4; L. 1973, ch. 137, § 2; 1975, ch. 174, § 2; 1982, ch. 68, § 1.

Compiler's Notes.

The 1975 amendment reduced the land use requirement in subd. (1) from five to two successive years; inserted "except where devoted to agricultural use in conjunction with other eligible acreage" in subd. (2); substituted "averaged at least $1000 per year, not including rental income, during the two-year period" in subd. (2) for "averaged at least $250 per year during the five-year period"; substituted "on or before January 1 of the tax year" for "on or before October 1 of the year immediately preceding the tax year" in the first sentence of subd. (3)(a) and "January 1" for "October 1" in the second sentence; inserted "All necessary filing fees shall be paid by the owner at the time his application is filed" in subd. (3)(b); substituted "the owner shall, within ninety days thereafter, notify the county assessor and pay the roll-back tax imposed by section 59-5-91. Upon receipt of notice, unless payment of the roll-back tax accompanies that notice" in subd. (3)(b) for "the owner shall notify the county assessor"; inserted "and pay the roll-back tax imposed by section 59-5-91, within ninety days" in subd. (3)(c); added subd. (3)(d); and made minor changes in phraseology.

The 1982 amendment deleted "as herein provided" after "taxation" in the first sentence; added subd. (3)(e); and made minor changes in phraseology and style.

59-5-90. "Indicia of value" for agricultural use determined by tax commission. The assessor in valuing land which qualifies as land actively devoted to agricultural use under the test prescribed by this act, and as to which the owner thereof has made timely application for valuation, assessment and taxation hereunder for the tax year in issue, shall consider only those indicia of value which such land has for agricultural use as determined by the state tax commission. The

same as if it had been in the county at the time of the regular assessment. The county assessor shall enter the assessment on the tax rolls in the hands of the county treasurer or elsewhere, and if made after the assessment book has been delivered to the county treasurer, the assessment shall be reported by the assessor to the county auditor, and the auditor shall charge the assessor with the taxes on the property. The assessor shall notify the person assessed and immediately proceed to secure or collect the taxes as provided under Part 13 of this chapter. 1987

59-2-402. Proportional assessment of transitory personal property brought from outside state — Exemptions — Reporting requirements — Penalty for failure to file report — Claims for rebates and adjustments.

(1) If any taxable transitory personal property, other than property exempted under Subsection (2), is brought into the state at any time after the assessment date, a proportional assessment shall be made in accordance with rules adopted by the commission based upon the length of time that the property is in the state, but in no event may the minimum assessment be less than 25% of the full year's assessment.

(2) The following property is exempt from proportional assessment under Subsection (1) for the year in which the license fee or tax is paid:

(a) property acquired during the calendar year;

(b) registered motor vehicles with a gross laden weight of 27,000 pounds or less; and

(c) vehicles which are registered and licensed in another state.

(3) If any taxable transitory personal property is brought into the state at any time during the year, the owner of the property, or the owner's agent, shall immediately secure a personal property report form from the assessor, complete it in all pertinent respects, sign it, and file it with the assessor of the county in which the property is located.

(4) If the owner of the taxable transitory personal property, or the owner's agent, fails to secure, complete, and file a personal property report form with the county assessor, the assessor shall estimate the value of the property in accordance with Subsection 59-2-307(2). Any failure on the part of the owner or agent to report as required by this subsection subjects the property owner to a penalty of 50% of the amount of tax finally determined to be due.

(5) If property is exempt on the assessment date but subsequently becomes taxable, it shall be assessed in accordance with Subsection (1).

(6) An owner of taxable transitory personal property, except motor vehicles with a gross laden weight of 27,000 pounds or less, who has paid taxes on the personal property and who removes the property from the state prior to December, is entitled to a rebate of a proportionate share of the taxes paid as determined by the commission. If a claim for rebate or adjustments is filed with the county auditor by December 10, the auditor shall immediately submit the claim with a recommendation to the county governing body for its approval or denial. If the claim is not approved prior to the end of the calendar year, or within 30 days after its submission, or if the claim is submitted after December 10, it shall be considered denied, and the owners of the property may file an action in the district court for a refund or an adjustment. 1987

59-2-403. Assessment of interstate carriers — Apportionment.

When assessing contract, private, and exempt carriers covering interstate routes, the county assessor shall apportion the assessment for the rolling stock used in interstate commerce at the same percentage ratio that has been filed with the Prorate Department of the Motor Vehicle Division of the commission for determining the proration of registration fees. 1987

59-2-404. Uniform tax on aircraft — Collection of tax by county — Distribution of taxes — Rules to implement section.

(1) There is levied in lieu of the ad valorem tax a uniform tax on aircraft required to be registered with the state in an amount equal to 1% of the average wholesale market value of the aircraft as established by the commission.

(2) The uniform tax shall be collected by the counties with the registration fee and distributed to the taxing districts in accordance with Article XIII, Sec. 14, Utah Constitution.

(3) The commission shall promulgate rules to implement this section. 1987

PART 5

FARMLAND ASSESSMENT ACT

59-2-501. Short title.

This part is known as the "Farmland Assessment Act." 1987

59-2-502. Definitions.

As used in this part:

(1) "Land in agricultural use" means:

(a) land devoted to the raising of useful plants and animals, such as:

(i) forages and sod crops;

(ii) grains and feed crops;

(iii) livestock as defined in Section 59-2-102;

(iv) trees and fruits; or

(v) vegetables, nursery, floral, and ornamental stock; or

(b) land devoted to and meeting the requirements and qualifications for payments or other compensation under a crop-land retirement program with an agency of the state or federal government.

(2) "Roll-back" means the period preceding the withdrawal of the land from the provisions of this part or the change in use of the land, not to exceed five years, during which the land is valued, assessed, and taxed under this part. 1988

59-2-503. Qualifications for agricultural use valuation.

(1) For general property tax purposes, the value of land under this part is the value which the land has for agricultural use if the land:

(a) is not less than five contiguous acres in area, except where devoted to agricultural use in conjunction with other eligible acreage or as provided under Subsection (3);

(b) has a gross income from agricultural use, not including rental income, of at least $1000 per year;

(c) is actively devoted to agricultural use; and

(d) has been devoted to agricultural use for at least two successive years immediately preceding the tax year in issue.

(2) Land which (a) is subject to the privilege tax imposed by Section 59-4-101, (b) is owned by the state or any of its political subdivisions, and (c) meets the requirements of Subsection (1), is eligible for assessment based on its agricultural value.

(3) The commission may grant a waiver of the acreage limitation, upon appeal by the owner and submission of proof that 80% or more of the owner's, purchaser's, or lessee's income is derived from agricultural products produced on the property in question.

(4) (a) The commission may grant a waiver of the income limitation for the tax year in issue, upon appeal by the owner and submission of proof that the land was valued on the basis of agricultural use for at least two years immediately preceding that tax year, and that the failure to meet the income requirements for that tax year was due to no fault or act of the owner, purchaser, or lessee.

(b) As used in this section, "fault" does not include the intentional planting of crops or trees which, because of the maturation period, do not give the owner, purchaser, or lessee a reasonable opportunity to satisfy the income requirement. 1987

59-2-504. Application requirements — Change in land use or withdrawal.

(1) The owner of land eligible for valuation under this part shall submit an application to the county assessor of the county in which the land is located. Applications shall be accepted if filed prior to March 1 of the tax year in which valuation under this part is first requested. Any application submitted after January 1 is subject to a $25 late filing fee. Filing fees shall be paid to the county treasurer at the time the application is filed. All applications filed under this subsection shall be recorded by the county recorder.

(2) Once valuation under this part has been approved, the owner is not required either to file again or give any notice to the county assessor, until a change in the land use occurs. Failure of the owner to notify the county assessor and pay the roll-back tax imposed by Section 59-2-506 within 90 days after any change in land use subjects the owner to a penalty of 100% of the roll-back tax due.

(3) Any change in land use or other withdrawal of land from the provisions of this part subjects the land to the roll-back tax whether the change or withdrawal is voluntary or involuntary, unless the change in use or other withdrawal is due to ineligibility resulting solely from amendments to this part.

(4) Land which becomes exempt from taxation under Article XIII, Sec. 2, Utah Constitution, is not considered withdrawn from this part if the land continues to be used for agricultural purposes. 1987

59-2-505. Indicia of value for agricultural use assessment — Inclusion of fair market value on tax notice.

If valuing land which qualifies as land actively devoted to agricultural use under the test prescribed by Subsection 59-2-503(1), and for which the owner has made a timely application for valuation, assessment, and taxation under this part for the tax year in issue, the assessor shall consider only those indicia of value which the land has for agricultural use as determined by the commission. The assessor shall also include the fair market value assessment on the tax notice. The county board of equalization shall review the agricultural use value and fair market value assessments each year as provided under Section 59-2-1001. 1987

59-2-506. Roll-back tax — Recordation — Lien — Computation of tax — Procedure — Collection — Distribution.

(1) If land which is or has been in agricultural use, and is or has been valued, assessed, and taxed under this part, is applied to a use other than agricultural or is otherwise withdrawn from the provisions of this part, it is subject to an additional tax referred to as the "roll-back tax," and the owner shall, within 90 days after the change in land use, notify the county assessor of the change in land use and pay the roll-back tax.

(2) Upon receipt of the notice, the county assessor shall cause the following statement to be recorded by the county recorder: "On (date) this land became subject to the roll-back tax imposed by Section 59-2-506."

(3) The roll-back tax is a lien upon the land until paid, and is due and payable at the time of the change in use.

(4) The assessor shall determine the amount of the roll-back tax by computing the difference between the tax paid while the land was valued under this part, and that which would have been paid had the property not been valued under this part. The county treasurer shall collect the roll-back tax and certify to the county recorder that the roll-back tax lien on the property has been satisfied.

(5) The assessment of the roll-back tax imposed by Subsection (1), the attachment of the lien for these taxes, and the right of the owner or other interested party to review any judgment of the county board of equalization affecting the roll-back tax, shall be governed by the procedures provided for the assessment and taxation of real property not valued, assessed, and taxed under this part. The roll-back tax collected shall be paid into the county treasury and paid by the treasurer to the various taxing units pro rata in accordance with the levies for the current year. 1987

59-2-507. Land included as agricultural — Site of farmhouse excluded — Taxation of structures and site of farmhouse.

(1) Land under barns, sheds, silos, cribs, greenhouses and like structures, lakes, dams, ponds, streams, and irrigation ditches and like facilities is included in determining the total area of land actively devoted to agricultural use. Land which is under the farmhouse and land used in connection with the farmhouse, is excluded from that determination.

(2) All structures which are located on land in agricultural use, the farmhouse and the land on which the farmhouse is located, and land used in connection with the farmhouse, shall be valued, assessed, and taxed using the same standards, methods, and procedures that apply to other taxable structures and other land in the county. 1987

59-2-508. Application — Consent to audit and review — Purchaser's or lessee's affidavit.

(1) Any application for valuation, assessment, and taxation of land in agricultural use shall be on a form prescribed by the commission, and provided for the use of the applicants by the county assessor. The application shall provide for the reporting of information pertinent to this part. A certification by the owner that the facts set forth in the application are true may be prescribed by the commission in lieu of a

sworn statement to that effect. Statements so certified are considered as if made under oath and subject to the same penalties as provided by law for perjury

(2) All owners applying for participation under this part and all purchasers or lessees signing affidavits under Subsection (3) are considered to have given their consent to field audit and review by both the commission and the county assessor. This consent is a condition to the acceptance of any application or affidavit.

(3) Any owner of lands eligible for valuation, assessment, and taxation under this part due to the use of that land by, and the gross income qualifications of, a purchaser or lessee, may qualify those lands by submitting, together with the application under Subsection (1), an affidavit from that purchaser or lessee certifying those facts relative to the use of the land and the purchaser's or lessee's gross income which would be necessary for qualification of those lands under this part. 1987

59-2-509. Change of ownership.

Continuance of valuation, assessment, and taxation under this part depends upon continuance of the land in agricultural use and compliance with the other requirements of this part, and not upon continuance in the same owner of title to the land. Liability to the roll-back tax attaches when a change in use or other withdrawal of the land occurs, but not when a change in ownership of the title takes place, if the new owner both: (1) continues the land in agricultural use under the conditions prescribed in this part; and (2) files a new application for valuation, assessment, and taxation as provided in Section 59-2-508. 1987

59-2-510. Separation of land.

Separation of a part of the land which is being valued, assessed, and taxed under this part, either by conveyance or other action of the owner of the land, for a use other than agricultural, subjects the land which is separated to liability for the applicable roll-back tax, but does not impair the continuance of agricultural use valuation, assessment, and taxation for the remaining land if it continues to meet the requirements of this part. 1987

59-2-511. Acquisition of farmland by government agency — Requirements.

The acquisition by a government agency of land which is being valued, assessed, and taxed under this part subjects the land so acquired to the roll-back tax imposed by this part. The tax shall be paid by the owner of record before title may pass. Prior to payment by the acquiring agency, it shall notify the county assessor of the county in which the property is located of the sale and receive a clearance from the assessor that roll-back taxes have been paid or that the property is not subject to the assessment. 1987

59-2-512. Land located in more than one county.

Where contiguous land in agricultural use in one ownership is located in more than one county, compliance with the requirements of this part shall be determined on the basis of the total area and income of that land, and not the area or income of land which is located in any particular county 1987

59-2-513. Tax list and duplicate.

The factual details to be shown on the assessors s tax list and duplicate with respect to land which is being valued, assessed, and taxed under this part are the same as those set forth by the assessor with respect to other taxable property in the county. 1987

59-2-514. State Farmland Evaluation Advisory Committee — Membership — Duties.

(1) There is created a State Farmland Evaluation Advisory Committee consisting of five members appointed as follows:

(a) one member appointed by the commission who shall be chairman of the committee;

(b) one member appointed by the president of Utah State University;

(c) one member appointed by the state Department of Agriculture;

(d) one member appointed by the state County Assessors' Association; and

(e) one member actively engaged in farming or ranching appointed by the other members of the committee.

(2) The committee shall meet at the call of the chairman to review the several classifications of land in agricultural use in the various areas of the state and recommend a range of values for each of the classifications based upon productive capabilities of the land when devoted to agricultural uses. The recommendations shall be submitted to the commission prior to October 2 of each year. 1987

59-2-515. Rules prescribed by commission.

The commission may promulgate rules and prescribe forms necessary to effectuate the purposes of this part. 1987

PART 6

MOBILE HOMES

59-2-601. Definitions.

As used in this part:

(1) "Mobile home" means a structure transportable in one or more sections with the plumbing, heating, and electrical systems contained intact within the structure.

(2) "Permanently affixed" means anchored to, and supported by, a permanent foundation. 1988

59-2-602. Qualification of mobile home as improvement to real property — Requirements — Removal from property.

(1) Any person owning a mobile home and owning the real property to which the mobile home is permanently affixed who seeks to have the mobile home qualify as an improvement to real property may file an affidavit of affixture with the county recorder of the county in which the real property is located.

(2) The affidavit of affixture shall contain:

(a) the vehicle identification numbers of the mobile home;

(b) the legal description of the real property to which the mobile home is permanently affixed;

(c) a statement that the mobile home has not previously been assessed and taxed in this state as personal property or, if that is not the case, the name and address of the person to whom the last property tax notice for the mobile home was sent and the location of the mobile home when last taxed; and

(d) a description of any security interests in the mobile home.

(3) The owner shall present the affidavit to the Motor Vehicle Division and surrender either the manufacturer's original certificate of origin or the title to the mobile home to the division. The division shall